



General Assembly

February Session, 2014

Raised Bill No. 5587

LCO No. 2803



Referred to Committee on JUDICIARY

Introduced by:
(JUD)

AN ACT CONCERNING SEARCH WARRANTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 54-33a of the 2014 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective October 1, 2014*):

4 (a) As used in sections 54-33a to 54-33g, inclusive, as amended by
5 this act, "property" includes, [without limitation] but is not limited to,
6 documents, books, papers, films, recordings, records, data and any
7 other tangible thing; and "tracking device" means an electronic or
8 mechanical device that permits the tracking of the movement of a
9 person or object.

10 (b) Upon complaint on oath by any state's attorney or assistant
11 state's attorney or by any two credible persons, to any judge of the
12 Superior Court or judge trial referee, that such state's attorney or
13 assistant state's attorney or such persons have probable cause to
14 believe that any property (1) possessed, controlled, designed or
15 intended for use or which is or has been used or which may be used as

16 the means of committing any criminal offense; or (2) which was stolen
17 or embezzled; or (3) which constitutes evidence of an offense, or which
18 constitutes evidence that a particular person participated in the
19 commission of an offense, is within or upon any place, thing or person,
20 such judge or judge trial referee, except as provided in section 54-33j,
21 may issue a warrant commanding a proper officer to enter into or
22 upon such place or thing, search [the same or the] such place, thing or
23 person and take into such officer's custody all such property named in
24 the warrant.

25 (c) Upon complaint on oath by any state's attorney or assistant
26 state's attorney or by any two credible persons, to any judge of the
27 Superior Court or judge trial referee, that such state's attorney or
28 assistant state's attorney or such persons have probable cause to
29 believe that a criminal offense has been, is being, or will be committed
30 and that the use of a tracking device will yield evidence of the
31 commission of that offense, such judge or judge trial referee may issue
32 a warrant authorizing the installation and use of a tracking device. The
33 complaint shall identify the person on which or the property to, in or
34 on which the tracking device is to be installed, and, if known, the
35 owner of such property.

36 ~~[(c)]~~ (d) A warrant may issue only on affidavit sworn to by the
37 complainant or complainants before the judge or judge trial referee
38 and establishing the grounds for issuing the warrant, which affidavit
39 shall be part of the arrest file. If the judge or judge trial referee is
40 satisfied that grounds for the application exist or that there is probable
41 cause to believe that [they] grounds for the application exist, the judge
42 or judge trial referee shall issue a warrant identifying the property and
43 naming or describing the person, place or thing to be searched or
44 authorizing the installation and use of a tracking device and
45 identifying the person on which or the property to, in or on which the
46 tracking device is to be installed. The warrant shall be directed to any
47 police officer of a regularly organized police department or any state
48 police officer, to an inspector in the Division of Criminal Justice, to a

49 conservation officer, special conservation officer or patrolman acting
50 pursuant to section 26-6 or to a sworn motor vehicle inspector acting
51 under the authority of section 14-8. [The] Except for a warrant for the
52 installation and use of a tracking device, the warrant shall state the
53 date and time of its issuance and the grounds or probable cause for its
54 issuance and shall command the officer to search within a reasonable
55 time the person, place or thing named, for the property specified. A
56 warrant for the installation and use of a tracking device shall state the
57 date and time of its issuance and the grounds or probable cause for its
58 issuance and shall command the officer to complete the installation of
59 the device within a specified period not later than ten days after the
60 date of its issuance and authorize the installation and use of the
61 tracking device, including the collection of data through such tracking
62 device, for a reasonable period of time not to exceed thirty days from
63 the date the tracking device is installed. Upon request and a showing
64 of good cause, a judge or judge trial referee may authorize the use of
65 the tracking device for an additional period of thirty days.

66 (e) A judge or judge trial referee may issue a warrant pursuant to
67 this section for records or data that are in the actual or constructive
68 possession of a foreign corporation or business entity that transacts
69 business in this state, including, but not limited to, a foreign
70 corporation or business entity that provides electronic communication
71 services or remote computing services to the public. Such a warrant
72 may be served on an authorized representative of the foreign
73 corporation or business entity by hand, mail, commercial delivery,
74 facsimile or electronic transmission, provided proof of delivery can be
75 established. When properly served with a warrant issued pursuant to
76 this section, the foreign corporation or business entity shall provide to
77 the applicant all records or data sought by the warrant within five
78 business days of being served with the warrant, unless the judge or
79 judge trial referee determines that a shorter or longer period of time is
80 necessary or appropriate.

81 (f) The inadvertent failure of the issuing judge or judge trial referee

82 to state on the warrant the time of its issuance shall not in and of itself
83 invalidate the warrant.

84 Sec. 2. Section 54-33c of the general statutes is repealed and the
85 following is substituted in lieu thereof (*Effective October 1, 2014*):

86 (a) The applicant for [the] a search warrant shall file the application
87 for the warrant and all affidavits upon which the warrant is based with
88 the clerk of the court for the geographical area within which any
89 person who may be arrested in connection with or subsequent to the
90 execution of the search warrant would be presented with the return of
91 the warrant. [The]

92 (b) Except for a warrant for the installation and use of a tracking
93 device: (1) The warrant shall be executed within ten days and returned
94 with reasonable promptness consistent with due process of law and
95 shall be accompanied by a written inventory of all property seized; [.
96 A] (2) a copy of such warrant shall be given to the owner or occupant
97 of the dwelling, structure, motor vehicle or place designated [therein]
98 in the warrant, or the person named [therein] in the warrant; and [.
99 Within] (3) within forty-eight hours of such search, a copy of the
100 application for the warrant and a copy of all affidavits upon which the
101 warrant is based shall be given to such owner, occupant or person. The
102 judge or judge trial referee may, by order, dispense with the
103 requirement of giving a copy of the affidavits to such owner, occupant
104 or person at such time if the applicant for the warrant files a detailed
105 affidavit with the judge or judge trial referee which demonstrates to
106 the judge or judge trial referee that [(1)] (A) the personal safety of a
107 confidential informant would be jeopardized by the giving of a copy of
108 the affidavits at such time, or [(2)] (B) the search is part of a continuing
109 investigation which would be adversely affected by the giving of a
110 copy of the affidavits at such time, or [(3)] (C) the giving of [such] a
111 copy of the affidavits at such time would require disclosure of
112 information or material prohibited from being disclosed by chapter
113 959a.

114 (c) A warrant for the installation and use of a tracking device shall
115 be returned with reasonable promptness consistent with due process
116 of law and after the period authorized for tracking, including any
117 extension period authorized under subsection (d) of section 54-33a, as
118 amended by this act, has expired. Within ten days after the use of the
119 tracking device has ended, a copy of the application for the warrant
120 and a copy of all affidavits upon which the warrant is based shall be
121 given to the person who was tracked or the owner of the property to,
122 in or on which the tracking device was installed. The judge or judge
123 trial referee may, by order, dispense with the requirement of giving a
124 copy of the affidavits to the person who was tracked or the owner of
125 the property to, in or on which the tracking device was installed if the
126 applicant for the warrant files a detailed affidavit with the judge or
127 judge trial referee which demonstrates to the judge or judge trial
128 referee that (1) the personal safety of a confidential informant would
129 be jeopardized by the giving of a copy of the affidavits at such time, or
130 (2) the search is part of a continuing investigation which would be
131 adversely affected by the giving of a copy of the affidavits at such time,
132 or (3) the giving of a copy of the affidavits at such time would require
133 disclosure of information or material prohibited from being disclosed
134 by chapter 959a.

135 (d) If the judge or judge trial referee dispenses with the requirement
136 of giving a copy of the affidavits at such time pursuant to subsection
137 (b) or (c) of this section, such order shall not affect the right of such
138 owner, occupant or person to obtain such copy at any subsequent time.
139 No such order shall limit the disclosure of such affidavits to the
140 attorney for a person arrested in connection with or subsequent to the
141 execution of a search warrant unless, upon motion of the prosecuting
142 authority within two weeks of such person's arraignment, the court
143 finds that the state's interest in continuing nondisclosure substantially
144 outweighs the defendant's right to disclosure.

145 [(b)] (e) Any order entered pursuant to subsection (b) or (c) of this
146 section dispensing with the requirement of giving a copy of the

147 [warrant application and accompanying] affidavits to such owner,
 148 occupant or person [within forty-eight hours] shall be for a specific
 149 period of time, not to exceed (1) two weeks beyond the date the
 150 warrant is executed, or (2) with respect to a warrant for the installation
 151 and use of a tracking device, two weeks after any extension period
 152 authorized under subsection (d) of section 54-33a, as amended by this
 153 act, has expired. Within [that] the applicable time period set forth in
 154 subdivision (1) or (2) of this subsection, the prosecuting authority may
 155 seek an extension of such period of time. Upon the execution and
 156 return of the warrant, affidavits which have been the subject of such an
 157 order shall remain in the custody of the clerk's office in a secure
 158 location apart from the remainder of the court file.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2014</i>	54-33a
Sec. 2	<i>October 1, 2014</i>	54-33c

Statement of Purpose:

To revise search warrant provisions to address issues raised in State v. Esarey, 308 Conn. 819 (2013) regarding extraterritorial warrants for electronic information that is stored on an out-of-state server when the underlying investigation relates to crimes committed in this state, and United States v. Jones, 565 U.S. ____ (2012) regarding the attachment of a global-positioning-system (GPS) tracking device by a law enforcement agency to an individual's motor vehicle and subsequent monitoring of such motor vehicle's movements.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]